

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

MICHAEL D. ROSS,

Petitioner,

vs.

ERNIE MOORE, Warden,  
Lebanon Correctional Institution,

Respondent.

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Case No. 3:05cv056

JUDGE WALTER HERBERT RICE

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DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS  
OF UNITED STATES MAGISTRATE JUDGE (DOC. #11) IN THEIR  
ENTIRETY; PETITIONER'S OBJECTIONS TO SAID JUDICIAL FILING  
(DOC. #12) OVERRULED; JUDGMENT TO ENTER IN FAVOR OF  
RESPONDENT AND AGAINST PETITIONER, DENYING PETITION FOR  
WRIT OF HABEAS CORPUS, PURSUANT TO 28 U.S.C. §2254, IN ITS  
ENTIRETY AND DENYING A CERTIFICATE OF APPEALABILITY AND  
PERMISSION TO APPEAL *IN FORMA PAUPERIS*; TERMINATION ENTRY

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Pursuant to the reasoning and citations of authority set forth by the United States Magistrate Judge, in her Report and Recommendations dated October 24, 2005 (Doc. #11), as well as upon a thorough *de novo* review of this Court's file and the applicable law, this Court adopts said Report and Recommendations in their entirety, with the following amendment. In that judicial filing, the Magistrate Judge noted that the Sixth Circuit had not directly addressed the question of whether 42 U.S.C. § 2254(d) permits federal courts to conduct a *de novo* review

of claims under *Jackson v. Virginia*, 443 U.S. 307 (1979). Doc. #11 at 7-8 & n.

3. The Sixth Circuit resolved that question in *Parker v. Renico*, 506 F.3d 444 (6<sup>th</sup> Cir. 2007), holding that “[t]he law therefore commands deference at two levels in this case—first, to the jury’s verdict as contemplated by *Jackson*, and, second, to the state court’s consideration of the jury’s verdict as dictated by [the] AEDPA.”

*Id.* at 448. The Petitioner’s Objections to said judicial filing (Doc. #12) are overruled. Judgment will be ordered entered in favor of the Respondent and against the Petitioner, denying Petitioner’s Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254, and denying a Certificate of Appealability and permission to appeal *in forma pauperis*, given that this Court’s determination would not be debatable among jurists of reason and, further, that Petitioner has failed to establish a denial of a constitutional right cognizable by this Court.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

January 29, 2008

/s/ Walter Herbert Rice

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WALTER HERBERT RICE  
UNITED STATES DISTRICT JUDGE

Copies to:

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Stephanie L. Watson, Esq.

Magistrate Judge Sharon L. Ovington